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18<sup>th</sup> April 2018

**Information request**

**Reference number:** FOI2018/00344

Thank you for your email of 19<sup>th</sup> March 2018, in which you requested the following information:

*In line with your recommendations, I have narrowed the request as follows:*

1. *Could you provide **a list of all 263 viaducts** on your database.*
2. *Could you provide a list of **all viaducts that have had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.*
3. *Could you provide a copy of the **bat survey reports** for the viaducts that have **had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.*

I have processed your request under the Environmental Information Regulations 2004 (EIRs) as the information requested is environmental according to the definition in regulation 2 of the EIRs (section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, but requires us to consider it under the EIRs).

I can confirm that we hold some of the information you requested.

1. Could you provide **a list of all 263 viaducts** on your database.

Please see attached spreadsheet that lists all 263 viaducts in our asset database.

2. Could you provide a list of **all viaducts that have had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.

Please see attached spreadsheet to identify those that had pointing repairs undertaken between 01/01/2016 and 31/12/2017.

3. Could you provide a copy of the **bat survey reports** for the viaducts that have **had pointing carried out between January 2016 and December 2017**. Please exclude the Tay Bridge from this list.

Under Regulation 12(5)(g) a public authority may refuse to disclose information: *‘to the extent that its disclosure would adversely affect the protection of the environment to which the information relates.’*

The Information Commissioner’s guidance on this exception explains that:

*“...there may be situations when disclosing the information would actually have an adverse effect on the environment. The Directive says that a request may be refused if disclosure would adversely affect “the protection of the environment to which such information relates, such as the location of rare species” (Article 4(2)(h)). So if, for example, a public authority holds information about the breeding site of a rare bird species and disclosing the location of the site would expose the site to interference or damage, then the exception may be relevant because disclosure could adversely affect the protection of the environment.”<sup>1</sup>*

We consider that this example is very relevant in the present case.

The ICO’s guidance further explains that:

*‘To refuse a request for environmental information under the exception in regulation 12(5)(g), public authorities will need to establish:*

- that the information in question relates to the aspect of the environment that is being protected;*
- how and to what extent the protection of the environment would be affected...*

In this instance we believe that the information in question meets each of these criteria because this type of information by its very nature discusses the presence

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1630/eir\\_guidance\\_protection\\_of\\_the\\_environment\\_regulation.pdf](https://ico.org.uk/media/for-organisations/documents/1630/eir_guidance_protection_of_the_environment_regulation.pdf)

or absence of protected species. Ultimately, it would be difficult to release any of this kind of information into the public domain because of the potential harm that could result to the environment and the protected species.

This exception is subject to the public interest test and in order to determine where the public interest lies we have considered the arguments for and against disclosure and set out our findings below.

#### Factors in favour of disclosure

There is a general presumption in favour of public authorities providing information since greater transparency leads to greater accountability. This increased accountability provides greater understanding of our actions and the way in which we allocate public resources and undertake environmental impact assessments as part of our works.

#### Factors against disclosure

The purpose of the EIRs is to assist in “the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.” It is our considered view that providing requested information of this type would be likely to put the environment, and protected species in general, at increased risk and, in consequence, to do so would run contrary to the purposes of the EIR.

To conclude, information relating to the presence or absence of protected species has a specific sensitivity which requires us to carefully consider the impact if it were disclosed. In our view disclosure would be likely to lead to an increased risk of disturbance and potential harm therefore we have reached the conclusion that the public interest lies in us withholding the requested information.

Nothing in this letter should be taken as indicating the existence or otherwise of protected species at the location in question. I realise that this part of the response does not enable us to inform you about the presence or otherwise of bats in our structures and what actions we take to ensure they are not disturbed, however, when dealing with such requests until the EIR we must be mindful that any disclosure would be a disclosure to the wider public and not just to the individual making the request. Because of this, we must consider the harm that could result from this wider public disclosure.

If you have any enquiries about this response, please contact me in the first instance at [FOI@networkrail.co.uk](mailto:FOI@networkrail.co.uk) or on 01908 782405. Details of your appeal rights are below.

Please remember to quote the reference number at the top of this letter in all future communications.

Yours sincerely

Robert Malcolm  
Information Officer

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### **Appeal Rights**

If you are unhappy with the way your request has been handled and wish to make a complaint or request a review of our decision, please write to the FOI Compliance and Appeals Manager at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at [foi@networkrail.co.uk](mailto:foi@networkrail.co.uk). Your request must be submitted within 40 working days of receipt of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF